

REMARKS

Claim 1 has been amended by incorporating the subject matter of claims 4 and 30 into it. Claim 4 has been amended by requiring a larger claimed percentage of calcium carbonate. Support for these amendments exist throughout the present specification, including page 8, lines 12-13 and the examples.

Claim 30 has been canceled.

Claims 1-21 and 24-29 are currently pending.

The Office Action rejected claims 1-6, 8, 9, 13-17, 20, 21 and 24-30 under 35 U.S.C. § 103 as obvious over U.S. patent application publication no. 2003/0108501 (“Hofrichter”); claims 1-3, 5-15, 17-21 and 24-30 under 35 U.S.C. § 103 as obvious over U.S. patent 5,955,415 (“Gutierrez”) and claims 7, 10-12 and 18 under 35 U.S.C. § 103 as obvious over Hofrichter in view of Gutierrez. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

Given that the subject matter of claim 4 has been incorporated into claim 1 and that claim 4 was rejected over only Hofrichter, Applicants respectfully submit that the rejections based in whole or in part upon Gutierrez have been rendered moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

Regarding the remaining rejection, Hofrichter neither teaches nor suggests the claimed invention.

The claimed invention requires the polyalkyleneimine/mineral particle weight ratio to be 0.05-0.001. It also requires the presence of a significant amount of calcium

carbonate. In other words, the claimed invention relates to compositions containing calcium carbonate and polyalkyleneimine in a specified ratio. Hofrichter neither teaches nor suggests this invention. For example, the Office Action recognized this fact when it stated that Hofrichter does not teach the requisite components in the specific proportions as required by the instant claims. (Office Action at page 4).

The significance of the required polyalkyleneimine/mineral particle (calcium carbonate) weight ratio is amply demonstrated by the Rule 132 declarations in this case.

The first Rule 132 declaration demonstrates that compositions containing slightly above the minimum required polyalkyleneimine/mineral particle (calcium carbonate) weight ratio (0.0027) possess improved smoothness properties. The declaration also demonstrates that compositions containing polyalkyleneimine/mineral particle (calcium carbonate) in a ratio falling outside the claimed ratio (0.1667) do not possess such improved smoothness properties.

The second Rule 132 declaration further demonstrates that compositions containing the required polyalkyleneimine/mineral particle (calcium carbonate) weight ratio (0.005 and 0.0031) possess improved smoothness properties. The declaration also demonstrates that compositions containing polyalkyleneimine/mineral particle (calcium carbonate) in a ratio falling outside the claimed ratio (0.16) do not possess such improved properties.

Thus, the data in the Rule 132 declaration demonstrates that compositions having the required polyalkyleneimine/mineral particle (calcium carbonate) weight ratio of 0.05-0.001, throughout the claimed range, imparted hair with vastly different

smoothness properties compared to the comparative compositions, and this vast difference in cosmetic properties was surprising and unexpected given the similarity of the compositions.

In maintaining the pending § 103 rejections, the Office Action asserted that the data in Applicants' Rule 132 declarations were insufficient to rebut the alleged *prima facie* case of obviousness because the data were not commensurate in scope with the claims. In view of the claim amendments above and in view of the data submitted to date, Applicants respectfully submit that the data are commensurate in scope with the narrow claimed ratio range of mineral particle (calcium carbonate) to polyalkyleneimine, and that the alleged *prima facie* case of obviousness has been rebutted.

Furthermore, Hofrichter fails to teach or suggest the invention compositions -- a *prima facie* case of obviousness does not exist. For example, Hofrichter merely states that a suspending agent can optionally be present in his compositions, and that PEI could possibly be such a suspending agent. Nothing in Hofrichter teaches, suggests, or recognizes any benefits associated with actually combining PEI and solid mineral particles (calcium carbonate) in a shampoo or a rinse-out conditioner. In other words, given only the general guidance provided by Hofrichter, one skilled in the art would not be motivated to combine the claimed solid mineral particles (calcium carbonate) with PEI with the expectation that a useful, beneficial shampoo or rinse-out conditioner would result.

This is particularly true given that the claims require solid mineral particles (calcium carbonate) and PEI to be present in a specific ratio: a specific ratio which is

neither taught nor suggested by Hofrichter. Nothing in Hofrichter would lead one skilled in the art to combine solid mineral particles (calcium carbonate) and PEI in the required concentrations in shampoos or rinse-out conditioners, meaning that Hofrichter would not lead one skilled in the art to the claimed compositions or methods. In other words, the mineral particle (calcium carbonate) to polyalkyleneimine ratio in Hofrichter is not a “result effective variable” (“a variable which achieves a recognized result” -- see, MPEP § 2144.05 II. B), so one skilled in the art would not have been motivated to optimize it based on Hofrichter’s disclosure.

Thus, the facts of record in this case are (1) Hofrichter does not teach or suggest the required ratio of mineral particles (calcium carbonate) to polyalkyleneimine; and (2) compositions having the required ratio possess improved smoothness properties as compared to compositions which do not have the required ratio of required ingredients. These facts demonstrate the novelty and non-obviousness of the claimed invention.

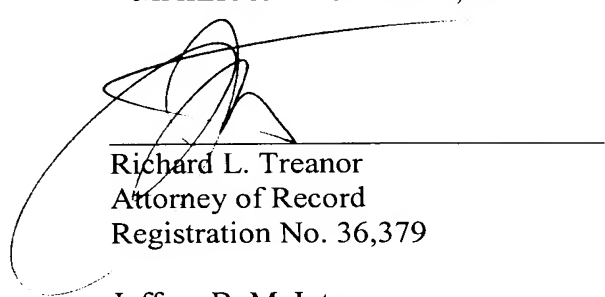
For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

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Applicants believe that the present application is in condition for allowance.
Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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